

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**April 27, 2017, at 11:00 a.m.**

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1. <a href="#"><u>15-90811</u></a> -E-7 <b>GOLD STRIKE HEIGHTS</b> <a href="#"><u>15-9061</u></a> <b>HOMEOWNERS ASSN.,</b> <b>INDIAN VILLAGE ESTATES, LLC V.</b> <b>GOLD STRIKE HEIGHTS</b>	<b>CONTINUED PRE-TRIAL</b> <b>CONFERENCE</b> <b>11-18-15 <a href="#"><u>1</u></a></b>
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Plaintiff's Atty: James L. Brunello

Defendant's Atty: Amanda Griffins; Peter G. Macaluso

Trustee's Atty: Clifford W. Stevens

Adv. Filed: 11/18/15

Answer: none

Nature of Action:

Determination of removed claim or cause

Notes:

Continued from 4/6/17 by stipulation of the Parties [specially set in Sacramento, CA]

Pre-Trial Statement of Plaintiff Indian Village Estates, LLC filed 4/13/17 [Dckt 118]

**SUMMARY OF COMPLAINT**

The removed Complaint was filed by Indian Village Estates, LLC in the California Superior Court for the County of Calaveras on March 20, 2015. A copy of the Complaint is filed as an Exhibit to the Notice of Removal. Dckt. 5. The First Cause of Action seeks declaratory relief as to the existence and interests of Gold Strike 2002 and Gold Strike 2007, and whether the conduct taken by these entities was properly exercised. The Second Cause of Action seeks to have set aside or determined void various non-judicial foreclosure sales by which Debtor asserted it acquired title to 31 lots. The Third Cause of Action seeks to have the trustee's deeds cancelled. The Fourth Cause of Action asserts that the asserted foreclosure sales were wrongful. The Fifth Cause of Action is to quiet title. The Sixth Cause of Action seeks to assert a claim for slander of title.

**April 27, 2017, at 11:00 a.m.**

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## FINAL BANKRUPTCY COURT JUDGMENT

The Defendant-Trustee asserts that this is a core proceeding, with this Adversary Proceeding relating to determination of Plaintiff's claim in the bankruptcy case of Gold Strike Heights Association (Bankr. E.D. Cal. 15-90811). Notice of Removal, Dckt. 1. Defendant Community Assessment Recovery Services asserts that the claims are non-core, and consents to the bankruptcy judge issuing all orders and the final judgment in this Adversary Proceeding. Fed. R. Bankr. P. 9027 (e) (3) Statement. Plaintiff Indian Village Estates, LLC confirmed at the hearing Plaintiff's consent to the bankruptcy judge issuing all orders and final judgment.

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c) (2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2017**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2017**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2017**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2017**.
- F. The Trial shall be conducted at ----x.m. on -----, **2017**.

The Parties in their respective Pretrial Conference Statements, Dckts. 98, 110, 118, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

### Jurisdiction and Venue:

1. The Defendant-Trustee asserts that this is a core proceeding, with this Adversary Proceeding relating to determination of Plaintiff's claim in the bankruptcy case of Gold Strike Heights Association (Bankr. E.D. Cal. 15-90811). Notice of Removal, Dckt. 1. Defendant Community Assessment Recovery Services asserts that the claims are non-core, and consents to the bankruptcy judge issuing all orders and the final judgment in this Adversary

Proceeding. Fed. R. Bankr. P. 9027 (e) (3) Statement. Plaintiff Indian Village Estates, LLC confirmed at the hearing Plaintiff's consent to the bankruptcy judge issuing all orders and final judgment.

2. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c) (2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

Points of Law:

1. Plaintiff Indian Village Estates

- a. Suspended Corporate Powers: *Timberline, Inc. v. Jaisinghani*, 54 Cal. App. 4th 1361 (1997); *Bourhis v. Lord*, 56 Cal.4th 320 (2013); *Cal-Western Business Services Inc. v. Corning Capital Group*, 221 Cal. App. 4th 304, 313 (2013);
- b. Revenue and Taxation Code §§ 23301, 23302( d); Corporations Code §§ 8010–19.1;
- c. *Diamond v. Superior Court*, 217 Cal. App. 4th 1172 (2013).

2. Defendant Community Assessment Recovery Services

- a. Civil Code § 2924(b)
- b. Civil Code § 47(b)(2)
- c. *Rodriguez v. JP Morgan Chase & Co.*, 809 F. 5 Supp.2d 1291, 1297
- d. Foreclosure trustee acted with malice: *Kachlon v. Markowitz*, 168 Cal. App. 4th 316, 340–41 (2008); *Consumer Solutions REO, LLC v. Hillery*, 658 F.Supp.2d 1002, 1018–19 (N.D. Cal. 2009); *Gonzalez on Behalf of Estate of Perez v. JP Morgan Chase Bank, N.A.*, WL 5462550, \*7–8 (N.D. Cal. 2014)
- d. *Gerritsen v. Warner Bros. Entertainment 20 Inc.*, 112 F. Supp. 3d 1011, 1036 (C.D. Cal. 2015)

3. Defendant Trustee Farrar

- a. Minor defects in foreclosure documents and sales: *Knapp v. Doherty*, 123 Cal. App.4th 76, 95–99 (2004); *Fontenot v. Wells Fargo Bank, N.A.*, 198 Cal. App. 4th 256 (2011).

b. Statutory BFP status for Defendant Trustee - 11 U.S.C. § 544(a)(3)

Abandoned Issues:

1. Plaintiff Indian Village Estates - None Stated.
2. Defendant Community Assessment Recovery Services
  - a. The Declaratory Relief cause of action is not viable. No actual controversy exists that is within the jurisdiction of the court.
  - b. The causes of action to set aside the 31 trustee sales and cancel the 31 trustee deeds are inapplicable to CARS since CARS has no interest in the property and only acted as an agent for the beneficiary.
  - c. The cause of action to Quiet Title does not contend that CARS has any interest in any of the 31 lots. CARS has no proprietary interest in any of the 31 lots, and this cause of action involves solely I'VE and GSHHA.
3. Defendant Trustee Farrar

“Mr. Farrar believes that [Indian Village Estates] agreed to abandon its cause of action for declaratory relief as all of the acts alleged have been completed and the dispute relates to the respective rights and interests in the Property post-foreclosure.”

**Plaintiff Indian Village Estates Witnesses:**

1. Mark Weiner
2. Don Lee
3. Michael Cooper
4. Paul Quent
5. Chris Castellucio
6. Rebecca Jolly
7. Thomas Chandler

Plaintiff Indian Village Estates Exhibits:

1. Complaint filed by INDIAN VILLAGE on March 20, 2015, in state court.
2. Answer filed by GOLD STRIKE 2 on June 1, 2015, in state court.
3. Answer filed by CARS on May 4, 2015, in state court.

4. July 1, 2011 Letter from Paul Quent to Mark Weiner.
5. October 1, 2012 Letter from Mark Weiner to Becky Jolly
6. October 9, 2012 Letter from Becky Jolly to Mark Weiner
7. October 12, 2012 Letter from Mark Weiner to Becky Jolly
8. October 24, 2012 Letter from Becky Jolly to Mark Weiner
9. March 17, 2013 Letter from Mark Weiner to Becky Jolly
10. August 14, 2013 Letter from Mike Cooper to Mark Weiner
11. August 23, 2013 Letter from Mark Weiner to Mike Cooper
12. November 3, 2013 Letter from Mark Weiner to Becky Jolly
13. January 6, 2014 Letter from Mark Weiner to Becky Jolly
14. February 1, 2014 Letter from Don Lee to Becky Jolly
15. September 8, 2014 Letter from Don Lee to Becky Jolly
16. October 7, 2014 Letter from Mike Cooper to Don Lee
17. October 21, 2014 Letter from Don Lee to Mike Cooper
18. October 22, 2014 Letter from Mike Cooper to Don Lee
19. July 24, 2012 contract between GOLD STRIKE 2 and CARS
20. 31 Notices of Delinquent Assessments recorded March 8, 2013
21. 31 Notices of Default recorded October 23, 2013
22. 31 Notices of Trustee's Sale recorded September 3, 2014
23. 31 Certificates of Foreclosure Sale recorded October 16, 2014
24. 31 Trustee's Deeds recorded January 12, 2015

Plaintiff Indian Village Estates Discovery Documents:

1. Deposition transcript of deposition of Mark Weiner held on April 26, 2016
2. Deposition of transcript of deposition of Don Lee held on April 27, 2016
3. Deposition of transcript of deposition of Rebecca Jolly held on October 11, 2016
4. Deposition of transcript of deposition of Michael Cooper held on October 14, 2016

**Defendant Community Assessment Recovery Services Witnesses:**

1. Rebecca Jolly
2. Michael Cooper
3. Mark Weiner
4. Don Lee

Defendant Community Assessment Recovery Services Exhibits:

1. Gold Strike Heights Declaration of Restrictions recorded 03/13/2002.
2. Amendment to Declaration of Restrictions Gold Strike Heights Homeowners Association recorded 07/23/2008.
3. Settlement Agreement and Mutual General Release dated March 18, 2011.
4. Community Assessment Recovery Services Delinquent Assessment Collection Agreement dated July 24, 2012.
5. Agreement between Gold Strike Heights Association and Community Assessment Recovery Services dated July 21, 2014.
6. Minutes of Gold Strike Heights Homeowners Association meeting of July 21, 2010.
7. Minutes of Gold Strike Heights Homeowners Association meeting of August 23, 2010.
8. Minutes of Gold Strike Heights Homeowners Association special meeting of August 23, 2010.
9. Minutes of Gold Strike Heights Homeowners Association continuation of General Membership meeting dated August 23, 2010.

10. Minutes of Gold Strike Heights Homeowners Association meeting of October 4, 2010.
11. Minutes of Gold Strike Heights Homeowners Association meeting and closed session of November 8, 2010.
12. Minutes of Gold Strike Heights Homeowners Association meeting of December 22, 2010.
13. Minutes of Gold Strike Heights Homeowners Association meeting of February 8, 2012.
14. Minutes of Gold Strike Heights Homeowners Association meeting of April 18, 2012.
15. Minutes of Gold Strike Heights Homeowners Association emergency meeting of July 9, 2012.
16. Minutes of Gold Strike Heights Homeowners Association emergency meeting of August 1, 2012.
17. Minutes of Gold Strike Heights Homeowners Association emergency meeting of August 29, 2012.
18. Minutes of Gold Strike Heights Homeowners Association meeting of October 30, 2012.
19. Minutes of Gold Strike Heights Homeowners Association emergency meeting of November 13, 2012.
20. Minutes of Gold Strike Heights Homeowners Association emergency meeting of December 10, 2012.
21. Minutes of Gold Strike Heights Homeowners Association special board of directors meeting of January 13, 2013.
22. Minutes of Gold Strike Heights Homeowners Association board of directors meeting of February 13, 2013.
23. Minutes of Gold Strike Heights Homeowners Association closed emergency meeting of February 13, 2013.
24. Minutes of Gold Strike Heights Homeowners Association board of directors meeting of April 8, 2013.
25. Minutes of Gold Strike Heights Homeowners Association board of directors meeting of February 13, 2013.
26. Minutes of Gold Strike Heights Homeowners Association special board of directors meeting of July 15, 2013.

27. Minutes of Gold Strike Heights Homeowners Association board of directors closed meeting of September 4, 2013.
28. Minutes of Gold Strike Heights Homeowners Association board of directors closed meeting of October 7, 2013.
29. Assignment of Interest in Claims for Past Due Assessments dated August 1, 2007.
30. Settlement with Placer Title as to Litigation over lot #43 dated March 15, 2011.
31. Letter by Paul Quent to M. Weiner dated July 1, 2011.
32. Notice of Intent to File a Notice of Delinquent Assessment dated September 5, 2012-145 Jasper Way, San Andreas, CA.
33. Notice of Intent to File a Notice of Delinquent Assessment dated 5 September 5, 2012-123 Jasper Way, San Andreas, CA.
34. Notice of Intent to File a Notice of Delinquent Assessment dated September 5, 2012-64 Gold Strike Way, San Andreas, CA.
35. Notice of Intent to File a Notice of Delinquent Assessment dated September 5, 2012-133 Jasper Way, San Andreas, CA.
36. Notice of Intent to File a Notice of Delinquent Assessment dated September 5, 2012-32 Jasper Way, San Andreas, CA.
37. Notice of Intent to File a Notice of Delinquent Assessment dated September 6, 2012-72 Gold Strike Way, San Andreas, CA.
38. Notice of Intent to File a Notice of Delinquent Assessment dated September 6, 2012-88 Gold Strike Way, San Andreas, CA.
39. Notice of Intent to File a Notice of Delinquent Assessment dated September 6, 2012-93 Gold Strike Way, San Andreas, CA.
40. Notice of Intent to File a Notice of Delinquent Assessment dated September 7, 2012-19 Trout Drive, San Andreas, CA.
41. Notice of Intent to File a Notice of Delinquent Assessment dated September 7, 2012-12 Gold Strike Way, San Andreas, CA.
42. Letter by M. Weiner to B. Jolly dated October 1, 2012.

43. Letter by B. Jolly to Indian Village Estates dated October 9, 2012, with referenced attachments.
44. Letter by M. Weiner to B. Jolly dated October 12, 2012.
45. Letter by M. Weiner to M. Cooper and P. Castelluccio dated October 18, 2012.
46. Letter by B. Jolly to Indian Village Estates dated October 24, 2012.
47. Letter by M. Weiner to D. Sutherland dated November 15, 2012.
48. Letter by D. Sutherland to M. Weiner dated November 27, 2012.
49. Letter by M. Weiner to D. Sutherland dated December 3, 2012.
50. Letter by D. Lee to D. Sutherland dated December 7, 2012.
51. Letter D. Sutherland to M. Weiner dated December 9, 2012.
52. Letter by M. Weiner to D. Sutherland dated December 17, 2012.
53. Letter by D. Sutherland to M. Weiner dated December 21, 2012.
54. Letter (first page only) by D. Lee to D. Sutherland dated January 7, 2013.
55. E-mail string between M. Cooper and B. Jolly dated January 8, 2013.
56. E-mail string between M. Cooper and B. Jolly dated January 4, 2013, and January 7, 2013.
57. Two e-mail strings between M. Cooper and B. Jolly dated January 8, 2013, and January 9, 2013.
58. E-mail string between M. Cooper and B. Jolly dated January 16, 2013, and January 17, 2013.
59. Letter by M. Weiner to D. Sutherland dated January 21, 2013.
60. Letter by D. Sutherland to M. Weiner dated February 2, 2013.
61. Letter by M. Weiner to D. Sutherland dated February 12, 2013.
62. E-mail by B. Jolly to P. Quent dated February 27, 2013.
63. E-mail string between B. Jolly to P. Quent dated February 27, 2013, and February 28, 2013, with attachments.

64. Letter by M. Weiner to B. Jolly dated March 17, 2013.
65. E-mail by B. Jolly to P. Quent dated April 8, 2013, with attachments.
66. Authorization to Proceed with Recording Notice of Default dated April 19, 2013.
67. Letter by M. Weiner to D. Sutherland dated May 8, 2013.
68. Letter by M. Weiner to D. Sutherland dated May 17, 2013.
69. E-mail by B. Jolly to P. Quent dated May 23, 2013.
70. Letter by M. Weiner to D. Sutherland dated June 14, 2013.
71. E-mail by B. Jolly to P. Quent dated July 9, 2013, with attachments.
72. Letter by M. Weiner to M. Cooper dated July 18, 2013.
73. Letter by M. Weiner to M. Cooper dated July 30, 2013.
74. E-mail by M. Cooper to M. Weiner.
75. Letter by M. Weiner to M. Cooper dated August 2, 2013.
76. E-mail by B. Jolly to M. Cooper dated August 6, 2013, with attachments.
77. Letter by M. Cooper to M. Weiner dated August 7, 2013.
78. Letter by M. Weiner to M. Cooper dated August 12, 2013.
79. Letter by M. Cooper to M. Weiner dated August 14, 2013.
80. Letter by M. Weiner to M. Cooper dated August 16, 2013.
81. Letter by M. Weiner to M. Cooper dated August 23, 2013.
82. Letter by M. Weiner to M. Cooper dated August 27, 2013.
83. E-mail by B. Jolly to M. Cooper dated October 9, 2013.
84. Notice of Default for 145 Jasper Way dated October 22, 2013.
85. Letter by M. Weiner to B. Jolly dated November 3, 2013.

86. Letter by M. Weiner to M. Cooper dated November 8, 2013.
87. E-mail by B. Jolly to M. Cooper dated November 18, 2013.
88. Letter by M. Weiner to M. Cooper dated November 27, 2013.
89. Letter by M. Weiner to M. Cooper dated December 13, 2013.
90. E-mail by M. Cooper to B. Jolly dated December 18, 2013.
91. Letter by D. Lee to M. Cooper dated December 23, 2013.
92. E-mail by M. Cooper to M. Weiner dated December 26, 2013.
93. Community Assessment Recovery Services Status Report as of 12/31/2013.
94. Letter by M. Weiner to B. Jolly dated January 6, 2014.
95. E-mail by M. Cooper to M. Weiner dated January 8, 2014.
96. E-mail by B. Jolly to M. Cooper dated January 10, 2014.
97. Letter by D. Lee to B. Jolly dated February 1, 2014.
98. E-mail string between B. Jolly and M. Cooper dated February 11, 2014; February 12, 2014; and February 13, 2014.
99. Letter by D. Lee and M. Weiner to S. Huberty dated February 21, 2104.
100. Letter by B. Jolly to D. Lee dated February 24, 2014.
101. Letter by D. Lee to B. Yook dated March 18, 2014.
102. Letter by D. Lee to M. Cooper dated April 18, 2014.
103. Letter by D. Lee to M. Cooper dated May 1, 2014.
104. E-mail string between B. Jolly and P. Quent dated May 28, 2014, and June 2, 2014.
105. Letter by D. Lee to M. Cooper dated June 1, 2014.
106. Letter by G. Maxim to D. Lee dated June 6, 2014.
107. Letter by D. Lee to M. Cooper dated June 13, 2014.

108. Letter by D. Lee to F. Cranmore dated June 16, 2014.
109. Letter by D. Lee to M. Cooper dated July 3, 2014.
110. Undated photograph of sign in rear of vehicle with wording beginning with: "Gold Strike Heights HOA."
111. Undated photograph of sign with wording beginning with: "Mike Cooper Must Go."
112. Letter by M. Cooper to D. Lee dated July 11, 2014.
113. Letter by D. Lee to M. Cooper dated July 16, 2014.
114. E-mail string between P. Quent and B. Jolly dated July 22, 2014.
115. E-mail string between P. Quent and B. Jolly dated July 23, 2014.
116. Trustee's Sale Guaranty dated August 21, 2014.
117. E-mail string between P. Quent and B. Jolly dated August 27, 2014, and August 28, 2014.
118. E-mail by B. Jolly to P. Quent dated August 28, 2014.
119. E-mail string between P. Quent and B. Jolly dated September 1, 2014.
120. Authorization to Bid at Foreclosure dated September 2, 2014.
121. Authorization to Publish Notice of Trustee Sale dated September 2, 2014.
122. E-mail string between M. Cooper and B. Jolly dated September 3, 2014, re: excerpt from board meeting minutes.
123. E-mail string between M. Cooper and B. Jolly dated September 3, 2014, re: board resolution.
124. Notice of Trustee's Sale for 145 Jasper Way dated September 3, 2014.
125. Affidavit of Non-Military Service dated September 5, 2014.
126. Letter by D. Lee to B. Jolly dated September 8, 2014.
127. E-mail by B. Jolly to P. Quent and M. Cooper dated September 17, 2014, with attachments.
128. E-mail string between P. Quent and B. Jolly dated September 29, 2014.

129. Trustee's Deed Upon Sale dated September 30, 2014.
130. Certificate of Foreclosure Sale Subject to Redemption dated September 30, 2014.
131. Letter by D. Lee to M. Cooper dated October 3, 2014.
132. E-mail by B. Jolly to P. Quent and M. Cooper dated October 7, 2014.
133. Letter by M. Cooper to D. Lee dated October 7, 2014.
134. E-mail string between B. Jolly, P. Quent, M. Cooper and D. Shannon dated October 7, 2014; October 8, 2014; and October 9, 2014.
135. Letter by D. Lee to M. Cooper dated October 10, 2014.
136. Letter by D. Lee to M. Cooper dated October 14, 2014.
137. Letter by D. Lee to M. Cooper dated October 17, 2014.
138. E-mail string between M. Cooper and B. Jolly dated October 17, 2014; and October 20, 2014.
139. Letter by D. Lee to M. Cooper dated October 21, 2014.
140. Letter by M. Cooper to D. Lee dated October 22, 2014.
141. E-mail by M. Cooper to B. Jolly and G. Maxim dated October 24, 2014.
142. E-mail string between M. Cooper, G. Maxim and B. Jolly dated October 24, 2014, and October 27, 2014.
143. Letter by D. Lee to M. Cooper dated October 31, 2014.
144. Letter by D. Lee to M. Cooper dated November 7, 2014.
145. Monthly Assessments for 145 Jasper Way dated January 1, 2015.
146. Letter by D. Lee to M. Cooper dated November 14, 2014.
147. Letter by D. Lee to M. Cooper dated November 26, 2014.
148. Letter by D. Lee to M. Cooper dated December 3, 2014.
149. Letter by M. Cooper to D. Lee dated January 13, 2015.

150. Letter by D. Lee to M. Cooper dated January 23, 2015.
151. Letter by M. Cooper to D. Lee dated February 17, 2015.
152. Letter by D. Lee to M. Cooper dated February 23, 2015.
153. Letter by M. Cooper to D. Lee dated March 9, 2015.
154. Letter by D. Lee to P. Quent dated March 16, 2015.
155. Letter by D. Lee to M. Cooper dated March 23, 2015.
156. E-mail by M. Cooper to B. Jolly dated April 11, 2015.
157. Complaint filed on March 20, 2015, in Calaveras County Superior Court.
158. Community Assessment Recovery Services's Answer to Plaintiffs' Complaint filed on May 4, 2015.
159. Community Assessment Recovery Services's Amended Answer to Plaintiffs' Complaint filed on September 8, 2015.

Defendant Community Assessment Recovery Services Discovery Documents:

1. Defendant Community Assessment Recovery Services's Answers to Plaintiffs' Form Interrogatories, Set One, Numbers 1–50.6.
2. Defendant Gold Strike Heights Homeowners Association's Answers to Plaintiffs' Form Interrogatories, Set One, Numbers 1–50.6.
3. Defendant Community Assessment Recovery Services's Form Interrogatories, Set One, Numbers 1–50.6 propounded on Plaintiff.
4. Plaintiff Indian Village Estates, LLC's Answers to Defendant Community Assessment Recovery Services's Form Interrogatories, Set One, Numbers 1–50.6.
5. Plaintiff Indian Village Estates, LLC's Further Answers to Defendant Community Assessment Recovery Services's Form Interrogatories, Set One, Numbers 55, 56, 57 and 58.
6. Defendant Community Assessment Recovery Services's Special Interrogatories, Set One, Numbers 1–58 propounded on Plaintiff.
7. Plaintiff Indian Village Estates, LLC's Answers to Defendant Community Assessment Recovery Services's Special Interrogatories, Set One, Numbers 1–58.

Unnumbered Discovery Document.

Deposition Transcript of Mark Weiner dated April 26, 2016, with Exhibits 1–11.

Excerpts—9: 13–20; 10: 14–25; 11: 3–17; 11: 23–25; 12: 2–4; 12: 15–20; 14: 18–24; 15: 5–10; 15: 11–16; 15:17–18; 15: 19–25; 16: 1–21; 17: 9–12; 17: 16–21; 17: 24–25; 18: 1–18; 19: 4–8; 20: 22–25; 20: 22–25; 21: 1–6; 21: 11–25; 22: 1–6; 22: 9–25; 23:1–14; 23: 20–25; 24: 1–24; 25: 1–3; 25: 6–23; 26: 14–25; 27: 6–19; 28: 7–16; 28: 25; 29: 1–21; 30: 2–8; 31: 5; 31: 10–25; 32: 1; 32: 7–15; 32: 18; 33:1–15; 34: 19–25; 35: 2–3; 35:14–21; 36: 1–22; 36: 25; 37: 1–5; 37: 11–14; 38: 1–25; 39: 1–20; 39: 25; 40: 3–5; 40: 24–25; 41:2–25; 42: 1–20; 42: 21–25; 43: 1–25; 44: 1–25; 45: 1–25; 46: 1–25; 47: 5–25; 48: 1–25; 49: 1–25; 50: 1–19; 50: 22–25; 51: 1–25; 52: 1–7; 51: 7–25; 53: 1–5; 53: 11–25; 54: 1–25; 55: 2–3; 55: 21–25; 56:1–25; 57: 1–25; 58: 2–25; 59: 1–25; 60: 1–8; 61: 16–25; 62: 1–25; 63: 1–4; 63: 11–25; 64: 3–25; 65: 1–25; 66: 1–4; 66: 9–18; 67: 4–15; 67: 21–25; 68: 1–22; 69: 2–25; 70: 1–23; 72: 5–22; 74: 4–25; 75: 2–25; 76:1–25; 77: 2–25; 78: 1–2; 78: 19–25; 79: 1–11; 79: 14–20; 89: 6–9; 80: 10–14; 81: 19–25; 82: 1–25; 83: 2–8; 83: 20–25; 89: 17–25; 90: 1–14; 90: 22–25; 91: 1–2; 91: 8–14; 91: 18–25; 92: 1–22; 93: 1–25; 94: 1–6; 94: 11–23; 95: 1–20

8. Deposition Transcript of Don Lee dated April 27, 2016, with Exhibits 12–18. Excerpts—7: 21–25; 8: 1–7; 8: 19–25; 9: 1–6; 9: 11–25; 10: 1–3; 10: 15–25; 11: 1–17; 11: 24–25; 12: 1–12; 12: 16–19; 12: 24–25; 13: 1–15; 13: 21–25; 14: 1–25; 15: 1–10; 15: 14–25; 16: 1–12; 17: 4–25; 18: 1–25; 19: 1–25; 20:1–5; 20: 8–24; 21: 5–9; 21: 17–25; 22: 1–25; 23: 1–25; 24: 1–25; 25: 1–25; 26: 1–25; 27: 1–11; 27: 22–25; 28: 1–17; 28: 19–21; 29: 1–9; 29: 14–25; 30: 1–25; 31: 1–12; 31: 17–25; 32: 1–25; 33: 1–25; 34: 2–25; 35: 2–25; 36: 1–15; 36: 20–25; 37: 1; 38: 13–25; 39: 1–25; 40: 1–4; 40: 8–25; 41: 1–25; 42: 1–5; 42: 9–20; 42: 25; 43:1–4; 43: 9–15; 44: 7–25; 45: 1–23; 49: 8–24; 50: 3–25; 51:4–25; 52: 1–5; 53: 12–25; 54: 1–25; 55: 1–7; 55: 10–25; 56: 1–24; 57: 7–25; 58: 1–25; 59: 1–25; 60: 1–25; 61: 1–25; 62: 1–23; 63: 1–5

9. Deposition Transcript of Rebecca Jolly dated October 11, 2016, with Exhibits 1–13. Excerpts—5: 14–15; 7: 20–25; 8: 1–4; 8: 5–9; 8: 17–21; 9: 12–13; 9: 19–23; 10: 10–21; 10: 24–25; 11: 1, 7–15; 12: 3–15; 13: 23–25; 14: 1–8; 14: 9–5; 15: 1–3; 16: 13–23; 18: 6–19; 18: 24–25; 19: 1–9; 19: 16–22; 20: 1–12; 20: 20–25; 21: 1–17; 21: 24–25; 22: 1–8; 22: 24–25; 23: 1–5; 23: 14–25; 24: 1; 24: 14–24; 26: 12–25; 27: 1–5; 27: 17–25; 28: 1–11; 28: 15–24; 29: 1–10; 29: 20–25; 30: 1–4; 31: 8–11; 34: 12–25; 35: 1; 35: 5–15; 35: 19–25; 36: 1–23; 37: 18–25; 38: 1–22; 39: 5–15; 40: 25; 41: 1–5; 41: 9–21; 42: 1–7; 45: 19–25; 46: 1–2; 46: 10–24; 47: 2–8; 48: 3–5; 49: 9–15; 51: 12–25; 52: 1–13; 52: 15–22; 54: 5–12; 55: 3–7; 55: 10–13; 57: 12–18; 58: 14–21; 59: 21–25; 60: 1–12

10. Deposition Transcript of Michael Cooper dated October 14, 2016, with Exhibits 1–15. Excerpts—8: 14–22; 9: 3–8; 9: 12–21; 10: 1–25; 12: 2–21; 13 : 1–25; 14: 1–9; 15: 24–25; 16: 1–25; 17: 1–7; 17: 10–18; 18: 4–14; 18: 22–25; 19: 1–22; 20: 3–15; 20: 18–25; 21: 1–25; 22: 1–19; 22: 22–25; 23: 1–12; 25: 2–8; 25: 12–24; 26: 19–25; 27: 1–11; 27: 21–25; 28: 1–25; 29: 1–5; 29: 24–25; 30: 1–18; 30: 22–25; 31: 1–25; 32: 1–25; 33: 1–8; 33: 18–25;

34: 1–5; 34: 7–21; 35: 7–25; 36: 1–25; 37: 1–25; 38: 1–25; 39: 1–20; 3: 21–25; 40: 1–21; 41: 18–25; 42: 1–25; 43: 1–20; 45: 3–25; 46: 1–12; 47: 6–25; 48: 1–10; 48: 14–25; 49: 1–7; 49: 13–24; 50: 1–25; 51: 1–25; 52: 1–25; 53: 1–14; 53: 20–25; 54: 1; 55: 4–11; 56: 8–11; 56: 15–25; 57: 1–8; 58: 14–25; 59: 1–25; 60: 1–7; 60: 11–19; 61: 3–25; 62: 1–9; 67: 6–11; 67: 21–25; 68: 1–25; 69: 11–21; 69: 23–25; 70: 1–16

Defendant Trustee Farrar Witnesses:

1. Gary Farrar
2. Michael W. Cooper
3. Rebecca Jolly
4. Mark Weiner
5. Don Lee

Exhibits:

1. Declaration of Restrictions (“CC&R’s”) governing the Property.
2. Amendment to the CC&R’s
3. Gold Strike Homeowner Association Delinquent Assessment Policy Statement and Foreclosure Policy
4. March 18, 2011 Settlement Agreement
5. Gold Strike Heights HOA Monthly Assessments Invoice No. 112010, dated July 1, 2011, re: 31 Lots owned by Indian Village Estates.
6. July 1, 2011 Letter from Paul Quent to Mark Weiner.
7. July 24, 2012 contract between Gold Strike 2 and Community Assessment Recovery Services (“CARS”).
8. 31 Notices of Intent to File Notice of Delinquent Assessments of September 5, 2012.
9. 31 Notices of Delinquent Assessments recorded March 8, 2013
10. 31 Notices of Default and Election to Sell Under Property Association Lien recorded October 23, 2013.
11. 31 Notices of Trustee’s Sale recorded September 3, 2014.

12. 31 Certificates of Foreclosure Sale Subject to Redemption recorded October 16, 2014.
13. 31 Trustee's Deeds Upon Sale recorded January 12, 2015.
14. October 7, 2013 Minutes of Gold Strike Homeowners Association Board of Directors authorizing foreclosure of the Property.
15. I'VE's Complaint filed on March 20, 2015, in Superior Court of Calaveras County.
16. October 1, 2012 Letter from Mark Weiner (I'VE) to Becky Jolly (CARS)
17. October 9, 2012 Letter from Becky Jolly (CARS) to Mark Weiner (I'VE)
18. October 12, 2012 Letter from Mark Weiner (I'VE) to Becky Jolly (CARS)
19. October 24, 2012 Letter from Becky Jolly (CARS) to Mark Weiner (I'VE)
20. March 17, 2013 Letter from Mark Weiner (I'VE) to Becky Jolly (CARS)
21. August 14, 2013 Letter from Mike Cooper (Gold Strike 2) to Mark Weiner (I'VE).
22. August 23, 2013 Letter from Mark Weiner (I'VE) to Mike Cooper (Gold Strike 2).
23. November 3, 2013 Letter from Mark Weiner (I'VE) to Becky Jolly (CARS).
24. January 6, 2014 Letter from Mark Weiner (I'VE) to Becky Jolly (CARS).
25. February 1, 2014 Letter from Don Lee (I'VE) to Becky Jolly (CARS).
26. September 8, 2014 Letter from Don Lee (I'VE) to Becky Jolly (CARS).
27. October 7, 2014 Letter from Mike Cooper (Gold Strike 2) to Don Lee.
28. October 21, 2014 Letter from Don Lee to Mike Cooper (Gold Strike 2).
29. October 22, 2014 Letter from Mike Cooper (Gold Strike 2) to Don Lee.

Discovery Documents:

1. Depositions
  - a. Mark Weiner—April 26, 2016
  - b. Don Lee—April 27, 2016

c. Michael Cooper (Gold Strike)—October 14, 2016

d. Rebecca Jolly (CARS)—October 11, 2016

2. Written Discovery

a. CARS's Responses to Plaintiff's Form Interrogatories Set One

b. Gold Strike Heights Homeowners Association's Responses to Plaintiff's Form Interrogatories, Set One

c. I'VE's responses to CARS's Form Interrogatories, Set One.

d. I'VE's further Responses to CARS's Form Interrogatories, Set One

e. I'VE's responses to CARS's Special Interrogatories, Set One

Further Discovery or Motions:

1. Indian Village Estates—None Anticipated.

2. Defendant Trustee Farrar: "The Trustee anticipates bringing a motion *in limine* to exclude the expert testimony of [Indian Village Estate's] disclosed expert Thomas J. Chandler."

Stipulations:

1. None

Amendments:

1. None

Dismissals:

1. Plaintiff Trustee and Indian Village Estate—First Cause of Action for Declaratory Relief

Agreed Statement of Facts:

1. None

Attorneys' Fees Basis:

1. Indian Village Estates asserts the right to treble damages and attorneys' fees based on a theory of "conspiracy to commit fraud" and as allowed under Penal Code § 496(c), citing *Bell v. Feibush*, 212 Cal. App. 4th 1041 (2013).

Cal. Pen. § 496

§ 496. Receiving or concealing stolen property; Duty of swap meet vendor or personal property dealer or collector to make reasonable inquiry; Action for damages; Attempts

(a) Every **person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion**, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, if the value of the property does not exceed nine hundred fifty dollars (\$950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

...

(b) **Every swap meet vendor**, as defined in Section 21661 of the Business and Professions Code, and every **person whose principal business is dealing in, or collecting, merchandise or personal property**, and every agent, employee, or representative of that person, who **buys or receives any property** of a value in excess of nine hundred fifty dollars (\$950) **that has been stolen** or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or

representative of that person, who buys or receives any property of a value of nine hundred fifty dollars (\$950) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any **person who has been injured by a violation of subdivision (a) or (b)** may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

***Bell v. Feibush*, 212 Cal. App. 4th 1041 (2013)**

“Penal Code section 496, subdivision (a) (section 496(a)) makes receiving or buying property “that has been obtained in any manner constituting theft” a criminal offense punishable by imprisonment. Section 496, subdivision (c) (section 496(c)) provides that any person “who has been injured by a violation of [section 496(a)] ... may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.” (Italics added.)”

...

Section 496(a) extends to property “that has been **obtained in any manner constituting theft.**” Penal Code section 484 describes acts constituting theft. The first sentence of section 484, subdivision (a) states: “Every person who shall feloniously steal, take, carry, lead, or drive away **the personal property of another**, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any **false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property**, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft.” (Italics added.) Section 484 thus defines theft to include theft by false pretense. (*People v. Gomez* (2008) 43 Cal.4th 249, 255, fn. 4.) Penal Code section 532 also defines criminal fraud “in terms nearly identical to [section] 484[, subdivision ](a)” and “provides that these acts are punishable ‘in the same manner and to the same extent’ as larceny.” (2 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) Crimes Against Property, § 48, p. 76.)”

2. None
3. Defendant Trustee Farrar: “[Indian Village Estate’s] complaint contains a request for attorney’s fees in the prayer but has not identified a legal basis for recovery of any such

fees.”

Trial Time Estimation: 2–3 Days

2.     [15-90811](#)-E-7     **GOLD STRIKE HEIGHTS**     **CONTINUED STATUS CONFERENCE**  
          [16-9002](#)     **HOMEOWNERS ASSN.,**     **RE: COMPLAINT**  
          **FARRAR V. MASSELLA ET AL**     **1-13-16 [1]**

Plaintiff's Atty: Clifford W. Stevens  
Defendant's Atty: James L. Brunello

Adv. Filed: 1/13/16  
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]  
          2/23/16 [Johnny Massella; Mary Massella]

Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]  
Answer: None  
Counterclaim Dismissed 5/2/16

Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]  
Answer: None  
Counterclaim Dismissed 5/2/16

Nature of Action:  
Validity, priority or extent of lien or other interest in property

**The Status Conference is XXXXXXXXXXXXXXXXXXXXX.**

Notes:

Continued from 4/6/17 to be conducted in conjunction with the continued Pre-Trial Conference in Adversary Proceeding 15-9061 [specially set in Sacramento, CA]

#### **APRIL 25, 2017 STATUS CONFERENCE**

#### **SUMMARY OF COMPLAINT**

Gary Farrar, the Chapter 7 Trustee in the Gold Strike Heights Homeowners Association bankruptcy case, (“Plaintiff-Trustee”) filed a complaint to avoid various liens filed by the Defendants. The

Plaintiff-Trustee asserts that the liens may be avoided pursuant to 11 U.S.C. § 544 (hypothetical BFP status for Plaintiff-Trustee) based on the deeds of trust not have been properly recorded.

## **SUMMARY OF ANSWERS**

Johnny Massella and Mary Massella, Trustees, and Robinson Enterprises, inc., Employee Profit sharing Plan (“Defendants”) have filed an answer that admits and denies specific allegations in the Complaint. Dckts. 9, 11.

The Answers assert nine affirmative defenses, including:

- (1) the interests of the estate were obtained through wrongful foreclosures,
- (2) the Debtor had constructive notice at the time of the foreclosure sales, the deeds of trust are subject to treatment as equitable deeds of trust,
- (3) Defendants may seek to have defects in the deeds of trust corrected, and
- (4) the nonjudicial foreclosure sales were void because Debtor’s corporate powers were suspended at the time of the sales.

## **COUNTERCLAIMS OF DEFENDANTS**

In the Counterclaims, Defendants seek reformation of the Deeds of Trust. On May 2, 2016, the court issued its order dismissing without prejudice the counterclaim. Dckt. 44.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor and Defendant on March 31, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Default was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion for Entry of Default is granted.</b></p>
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It appears from the record that defendant Sarah Wright failed to plead or otherwise defend in this proceeding as required by law.

Therefore, default is entered against defendant Sarah Wright as authorized by Federal Rule of Civil Procedure 55 as incorporated by Federal Rule of Bankruptcy Procedure 7055.

The validity of service will also be considered by the court in connection with entry of Default Judgment.

Plaintiff shall apply for a default judgment within 30 days of the date of this order, which the court notes has been filed already. *See* Dckt. 57. A "prove-up" hearing has been scheduled on the court's regular law and motion calendar for May 31, 2017, on notice to the defendant pursuant to Local Rule 9014-1. The request for default judgment may be supported by affidavit in lieu of live testimony. Failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rule of Civil

Procedure 16(f), including, without limitation, dismissal of this adversary proceeding without further notice or hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Entry of Default against defendant Sarah Wright filed by Plaintiff-Debtor Susan Gedney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and default is entered against defendant Sarah Wright in this adversary proceeding, No. 17-02006. Plaintiff has already filed and set for hearing the Motion for Entry of Default Judgment. Dckt. 57.